

of Governors of the Federal Reserve System, unless the OCC determines that the disclosures at the holding company level do not adequately capture the potential impact of the scenarios on the capital of the covered institution.

(c) *Information to be disclosed in the summary.* The information disclosed shall, at a minimum, include—

(1) A description of the types of risks included in the stress test under this part;

(2) A summary description of the methodologies used in the stress test;

(3) Estimates of aggregate losses, pre-provision net revenue, provisions for loan and lease losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the OCC); and

(4) An explanation of the most significant causes of the changes in regulatory capital ratios.

(d) *Disclosure of estimates for the planning horizon.* (1) The disclosure of the estimates of aggregate losses, pre-provision net revenue, provisions for loan and lease losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the OCC), as required by paragraph (b) of this section, must reflect the estimated cumulative effects, as well as the estimated capital ratios, at the end of the planning horizon for the severely adverse scenario.

(2) With respect to the capital ratio disclosure required in paragraph (d)(1) of this section, the disclosure must also include the value at the beginning of the planning horizon, and the minimum over the planning horizon of the estimated quarter-end values of each ratio.

PART 47 [RESERVED]

PART 48—RETAIL FOREIGN EXCHANGE TRANSACTIONS

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AUTHORITY: 7 U.S.C. 27 *et seq.*; 12 U.S.C. 1 *et seq.*, 24, 93a, 161, 1461 *et seq.*, 1462a, 1463, 1464, 1813(q), 1818, 1831o, 3101 *et seq.*, 3102, 3106a, 3108, and 5412.

SOURCE: 76 FR 41384, July 14, 2011, unless otherwise noted.

§ 48.1 Authority, purpose, and scope.

(a) *Authority*—(1) *National banks.* A national bank may offer or enter into retail foreign exchange transactions. A national bank offering or entering into retail foreign exchange transactions must comply with the requirements of this part.

(2) *Federal savings associations.* A Federal savings association may offer or enter into retail foreign exchange transactions. A Federal savings association offering or entering into retail foreign exchange transactions must comply with the requirements of this part as if each reference to a national bank were a reference to a Federal savings association.

(b) *Purpose.* This part establishes rules applicable to retail foreign exchange transactions engaged in by national banks and applies on or after the effective date.

(c) *Scope.* Except as provided in paragraph (d) of this section, this part applies to national banks.

(d) *International applicability.* Sections 48.3 and 48.5 to 48.16 do not apply to retail foreign exchange transactions between a foreign branch of a national bank and a non-U.S. customer. With respect to those transactions, the foreign branch remains subject to any disclosure, recordkeeping, capital, margin, reporting, business conduct, documentation, and other requirements of foreign law applicable to the branch.

[76 FR 41384, July 14, 2011, as amended at 76 FR 56096, Sept. 12, 2011]

§ 48.2 Definitions.

In addition to the definitions in this section, for purposes of this part, the

following terms have the same meaning as in the Commodity Exchange Act: “Affiliated person of a futures commission merchant”; “associated person”; “contract of sale”; “commodity”; “eligible contract participant”; “futures commission merchant”; “future delivery”; “option”; “security”; and “security futures product”.

Affiliate has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

Commodity Exchange Act means the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

Federal savings association means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464) or an operating subsidiary thereof.

Forex means foreign exchange.

Identified banking product has the same meaning as in section 401(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

Institution-affiliated party or *IAP* has the same meaning as in section 3(u)(1), (2), or (3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)(1), (2), or (3)).

Introducing broker means any person that solicits or accepts orders from a retail forex customer in connection with retail forex transactions.

National bank means:

- (1) A national bank;
- (2) A Federal branch or agency of a foreign bank, each as defined in 12 U.S.C. 3101; and
- (3) An operating subsidiary of a national bank or an operating subsidiary of a Federal branch or agency of a foreign bank.

Related person, when used in reference to a retail forex counterparty, means:

- (1) Any general partner, officer, director, or owner of 10 percent or more of the capital stock of the retail forex counterparty;
- (2) An associated person or employee of the retail forex counterparty, if the retail forex counterparty is not a national bank;
- (3) An IAP of the retail forex counterparty, if the retail forex counterparty is a national bank; and

- (4) A relative or spouse of any of the foregoing persons, or a relative of such spouse, who shares the same home as any of the foregoing persons.

Retail foreign exchange dealer means any person other than a retail forex customer that is, or that offers to be, the counterparty to a retail forex transaction, except for a person described in item (aa), (bb), (cc)(AA), (dd), or (ff) of section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)).

Retail forex account means the account of a retail forex customer, established with a national bank, in which retail forex transactions with the national bank as counterparty are undertaken, or the account of a retail forex customer that is established in order to enter into such transactions.

Retail forex account agreement means the contractual agreement between a national bank and a retail forex customer that contains the terms governing the customer’s retail forex account with the national bank.

Retail forex business means engaging in one or more retail forex transactions with the intent to derive income from those transactions, either directly or indirectly.

Retail forex counterparty includes, as appropriate:

- (1) A national bank;
- (2) A retail foreign exchange dealer;
- (3) A futures commission merchant; and
- (4) An affiliated person of a futures commission merchant.

Retail forex customer means a customer that is not an eligible contract participant, acting on his, her, or its own behalf and engaging in retail forex transactions.

Retail forex obligation means an obligation of a retail forex customer with respect to a retail forex transaction, including trading losses, fees, spreads, charges, and commissions.

Retail forex proprietary account means: A retail forex account carried on the books of a national bank for one of the following persons; a retail forex account of which 10 percent or more is owned by one of the following persons; or a retail forex account of which an aggregate of 10 percent or more of

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which is owned by more than one of the following persons:

- (1) The national bank;
- (2) An officer, director, or owner of 10 percent or more of the capital stock of the national bank; or
- (3) An employee of the national bank, whose duties include:
 - (i) The management of the national bank's business;
 - (ii) The handling of the national bank's retail forex transactions;
 - (iii) The keeping of records, including without limitation the software used to make or maintain those records, pertaining to the national bank's retail forex transactions; or
 - (iv) The signing or co-signing of checks or drafts on behalf of the national bank;
- (4) A spouse or minor dependent living in the same household as any of the foregoing persons; or
- (5) An affiliate of the national bank.

Retail forex transaction means an agreement, contract, or transaction in foreign currency, other than an identified banking product or a part of an identified banking product, that is offered or entered into by a national bank with a person that is not an eligible contract participant and that is:

- (1) A contract of sale of a commodity for future delivery or an option on such a contract;
- (2) An option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78(f)(a)); or
- (3) Offered or entered into on a leveraged or margined basis, or financed by a national bank, its affiliate, or any person acting in concert with the national bank or its affiliate on a similar basis, other than:
 - (i) A security that is not a security futures product as defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)); or
 - (ii) A contract of sale that:
 - (A) Results in actual delivery within two days; or
 - (B) Creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business; or

- (iii) An agreement, contract, or transaction that the OCC determines is not functionally or economically similar to:

- (A) A contract of sale of a commodity for future delivery or an option on such a contract; or

- (B) An option, other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78(f)(a)).

[76 FR 41384, July 14, 2011, as amended at 76 FR 56096, Sept. 12, 2011]

§ 48.3 Prohibited transactions.

(a) *Fraudulent conduct prohibited.* No national bank or its IAPs may, directly or indirectly, in or in connection with any retail forex transaction:

- (1) Cheat or defraud or attempt to cheat or defraud any person;

- (2) Willfully make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

- (3) Willfully deceive or attempt to deceive any person by any means whatsoever.

(b) *Acting as counterparty and exercising discretion prohibited.* If a national bank can cause retail forex transactions to be effected for a retail forex customer without the retail forex customer's specific authorization, then neither the national bank nor its affiliates may act as the counterparty for any retail forex transaction with that retail forex customer.

§ 48.4 Supervisory non-objection.

(a) *Supervisory non-objection required.* Before commencing a retail forex business, a national bank must provide the OCC with prior notice and obtain from the OCC a written supervisory non-objection.

(b) *Requirements for obtaining supervisory non-objection.*

- (1) In order to obtain a written supervisory non-objection, a national bank must:

- (i) Establish to the satisfaction of the OCC that the national bank has established and implemented written policies, procedures, and risk measurement and management systems and controls for the purpose of ensuring that it conducts retail forex transactions in a safe